

BEFORE the
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Lake Creek Post Office
Lake Creek, Texas

Docket No. A2011-52

REPLY COMMENTS OF THE PUBLIC REPRESENTATIVE

November 1, 2011

I. INTRODUCTION AND BACKGROUND

The Postal Regulatory Commission (Commission) received four petitions to review the Postal Service's final determination to close the Lake Creek, Texas Post Office.¹ By Order issued August 25, 2011, the Commission accepted the appeal and docketed the petitions, instituted the current review proceedings, appointed a Public Representative, and established a procedural schedule.² On August 30, 2011, the Postal Service filed an electronic version of the Administrative Record (AR) concerning its "Final Determination to Close the Lake Creek, TX Post Office and Establish Rural Route Service" dated June 30, 2011.³ On September 27, 2011, petitioner Burt filed Commission Form 61, Participant Statement, in support of his petition. The Postal Service filed comments supporting the Final Determination to close the Lake Creek Post Office on October 12, 2011.⁴

¹ Letters were received at the Commission from Linda L. Baker and Daryl Blakley on July 26, 2011, Lynne P. Long on July 28, 2011 and Paul M. Burt on August 1, 2011,

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 25, 2011 (Order No. 825).

³ United States Postal Service Notice of Filing, August 30, 2011. The official record index to the administrative record (AR) lists items 1 through 45, Postal Service Docket Number 1369563-75450, but the Final Determination (FD) is labeled Item No. 47. AR Item No. 47. To avoid confusion, these reply comments reference the Final Determination only as the FD. Many of the documents in the AR are not identified by Item Number, making identification difficult.

⁴ United States Postal Service Comments Regarding Appeal, October 12, 2011 (Comments).

II. STATEMENT OF FACTS

The Lake Creek Post Office, Lake Creek, Texas 75450 is located in Delta County, Texas. It is an EAS Level-11 post office providing service to 28 Post Office Box customers and 116 delivery customers, also referred to as intermediate rural route boxes served. AR Item Nos. 1, 8 (#7), and 33 at 2.⁵ There are no permit mailers or postage meter customers. AR Item No. 15. There is no carrier service. AR Item No. FD at 2. The post office is not suspended and is currently active. AR Item Nos. 5, 6, 7, 18.

Lake Creek's postmaster retired January 2, 2009 and since then an officer-in-charge (OIC) has operated the office. AR Item No. 21, 33 at 9; Postal Service Comments at 2. Upon closing the post office, the non-career postmaster relief (PMR) may be terminated. AR Item No. 33 at 9. No other employees will be affected. *Id.* Lake Creek is not incorporated.⁶ It is comprised of retirees, commuters, farmers and workers in local businesses. FD at 8. There are no businesses and one church is located in the service area. AR Item No. 18.

Window service at the Lake Creek Post Office is provided Monday through Friday from 8:00 a.m. to 3:45 p.m. and on Saturdays from 8:00 a.m. to 9:00 a.m. The lobby is open 24 hours Monday through Saturday. AR Item No. 15; Item No. 33 at 2. Retail window revenue averaged 16 transactions for 17 minutes of retail workload daily as evidenced by a sample two week period in December, 2010. AR Item Nos. 10-13, 33 at 2. Office receipts were \$29,206 (76 revenue units) in FY 2008; \$20,857 (54 revenue units) in FY 2009; and \$26,505 (69 revenue units) in FY 2010. AR Item No. 33 at 2. The facility is accessible to persons with disabilities. AR Item No. 15. The annual cost of leasing the building is \$6,300. AR Item No. 18.

⁵ *But see* AR Item No. 17a, "Estimated Cost for alternate Replacement Service" listing 24 boxes to be added to the rural route. If this number is understated, so is the calculated cost of alternative rural route service.

⁶ The Postal Service comments state otherwise, Comments at 8, but the FD states that Lake Creek is not incorporated. FD at 8.

The December 3, 2010 request for a discontinuance study indicates that the office does not earn 2 hours. AR Item Nos. 1 and 33 at 2. According to the Postal Service, the estimated annual savings associated with the closing is \$42,134. FD at 9, Item No. 33 at 9.

Upon closing the Lake Creek post office, rural route delivery and retail service will be provided by the Cooper Post Office, an EAS-level 18 office located 8 miles away. Item No. 33 at 2, FD at 2. The community name will continue to be used. AR Item Nos. 21, 23. A carrier route address will be assigned. The Cooper Post Office will continue to provide window service. The Cooper Post Office hours are Monday through Friday 8:30 a.m. to 4:00 p.m. and closed Saturday. AR Item No. 33; FD at 2. The Cooper Post Office lobby is accessible 24 hours per day Monday through Friday and closed on Saturday. *Id.* The Post Office Box fees at the Cooper Post Office will be an increase over the Lake Creek fees. AR Item No. 21. There are 62 Post Office Boxes available at the Cooper Post Office. FD 2.

A total of 144 questionnaires and a cover letter were distributed to customers on January 26, 2011. Fifty-three (53) questionnaires were returned; 4 were favorable and 30 were unfavorable, and 19 did not express an opinion. FD at 7. A community meeting was held on February 23, 2011. The community meeting roster includes 19 signatures of customers present. AR Item No. 24.

On March 30, 2011, the Proposal to close the Lake Creek Post Office together with a separate invitation for comments on the proposal were posted in the Lake Creek Post Office for the required 60 days and removed on May 31, 2011. AR Item Nos. 36 at 1-2, 11-12.

The Final Determination by the Vice President of Delivery and Post Office Operations to close the Lake Creek Post Office was posted in the Lake Creek Post Office on July 1, 2011 and removed August 2, 2011. FD cover page. There is no indication that the Final Decision was posted at the Cooper Post Office or at any other post office.

The Final Determination does not recite a basis for the decision but concludes the proposal will not adversely affect the community. FR at 8. Six advantages of the Final Determination are listed. Customers will not need to travel to the post office for retail services. Customers will have 24-hour access to delivered mail. Savings to the Postal Service will contribute to stable postage rates. CBU's (Cluster Box Units) offer security of individually locked mail compartments. Customers opting for carrier service will not have to pay box rental fees. Finally, closing saves time and energy for customers who will not have to drive to the post office to pick up mail. FD at 2.

Four disadvantages are recognized: the loss of a retail outlet and postmaster position, the need for customers to meet the rural carrier for retail transactions, changing mailing addresses even though the ZIP Code and city will not be modified, and Post Office Box fees may be increased. FD at 3.

III. POSITIONS OF THE PARTIES

A. The Petitioners

One Petitioner filed a Form 61. No other initial briefs or comments were received from Petitioners. In the absence of those filings, Petitioners' views are limited to the claims expressed in the Form 16 and the petitions.

Petitioner Burt feels it is vital to the community to retain the post office's services. His Form 16 received September 26, 2011 states there are a lot of elderly people that don't have means of getting to an office further away. There is "significant vandalism" there and Petitioner does not feel comfortable putting and receiving money in rural boxes. Petitioner suggests cutting the Post Office hours and proposes lowering the rental cost to alleviate the projected losses.

Petitioner Long cites closing as a "major inconvenience." Currently 9 miles from Lake Creek, his next closest office is 20 miles away and he is one-half mile off the road.

Petitioner Baker also claims closing would be a hardship and the end of universal service. Petitioner Blakley claims hardship for him and his business and that the service is needed.

B. The Postal Service

The Postal Service argues that it has (1) followed the proper procedures; (2), considered the effect of the closing on the Lake Creek community, the economic savings of the closing, the effect on postal employees and other factors consistent with the mandate of 39 U.S.C. § 404(d)(2)(A); and (3) determined the advantages outweigh the disadvantages and that effective and regular service will continue to be provided Lake Creek customers. The Postal Service rejects Petitioner's suggestions to reduce office hours and the rent as they are far outweighed by the calculated labor cost savings of \$40,697.00. Comments at 9. The Comments conclude the Postal Service's decision should be affirmed. Comments at 11.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The PAEA delegates to the Commission the authority to review post office closings pursuant to 39 U.S.C. §404(d)(5). That section requires the Commission to review the Postal Service's determination to close a post office on the basis of the record that was before the Postal Service. The Commission shall set aside any determination, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record.

The Commission may affirm the Postal Service's determination or order the entire matter returned to the Postal Service for further consideration, but it may not modify the Postal Service's determination.⁷

B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views.

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. §404(d)(2) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. §404(d)(2)(A). The Postal Service is also precluded from considering compliance with provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.* See 39 U.S.C. §404(d)(2)(B).

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. §404(d)(3). The Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available to persons served by such post office. 39 U.S.C. §404(d)(4).

⁷ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. The petitioner in this proceeding did not request suspension of the closure of the Lake Creek Post Office.

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the contention presented in the Petition, and the Postal Service Comments, the Public Representative believes the Postal Service has not performed in accordance with the law. Although the Postal Service claims to have addressed the required issues, it has not adequately taken into account, (1)) the effect of the closing on the community served, (2) the effect on the Postal Service employee at the Lake Creek Post Office, and (3) the economic savings to the Postal Service due to the closing.⁸

A. Required Notice of Final Determination was not provided

The Postal Service has not complied with law as set forth in its own rules regarding the procedural requirements for posting notice of Final Determinations. The Postal Service's rules require posting of Proposals at "each affected post office." 39 CFR 241.3(d)(1). The Cooper Post Office is clearly affected as it will be the administrative office of the Lake Creek delivery area and rural deliveries will emanate from that post office. According to the circular date stamps, the Proposal was posted and removed properly at the Lake Creek and Cooper Post Offices, but the Cooper Post Office posting was insufficient and contrary to the Postal Service's own rules. The Final

⁸ The fourth required statutory consideration of whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining"⁸. Is not relevant here because there is no creditable showing that the post office is not self-sustaining. As shown below, the economic analysis does not demonstrate the Postal Service is not self-sustaining.

Determination was posted at Lake Creek (FD at 1), but nothing in the record indicates the Final Determination was posted at the Cooper Post Office.

The Postal Service Comments erroneously state otherwise. After correctly pointing out the Proposal was posted at Lake Creek and Cooper Post Offices, the Comments state, “The FD was posted at the same two Post Offices starting on July 1, 2011, as confirmed by the round-dated FD cover sheets that appear in the administrative record.” Comments at 4. However, one searches in vain for evidence of posting the Final Determination at the Cooper Post Office. The failure to post the Final Determination at the Cooper Post Office is contrary to the Postal Service’s own rules requiring notice of Final Determinations to be posted “in the affected post office or offices.” 39 CFR 241.3(g)(1)(i). Clearly, the Cooper Post Office will be affected. The Postal Service conceded this point by posting the Proposal at the Cooper Post Office and by erroneously claiming the Final Determination was posted at the Cooper Post Office.

The question of compliance here turns on whether the Cooper Post Office will be affected by the closing. Under the Postal Service’s procedural rules in effect for this proceeding, the Proposal is to be posted “in each affected post office.” 39 CFR 241.3(d)(1). This rule has recently been modified and its application clarified although the new rules are not applicable to this closing process. Under the newly modified rules, there is no question that the Cooper Post Office is affected. Under the new Postal Service rules, the Proposal must be posted prominently at any retail facility “likely to serve a significant number of customers of the USPS-operated retail facility under study.” 39 CFR 241.3(d)(1)(iii).⁹ The record therefore does not affirmatively demonstrate the posting requirement was met at the Cooper Post Office and the case should be remanded on this point alone.

⁹ See 76 Fed. Reg. 41423, July 14, 2011.

B. The Decision Analysis Required by 39 U.S.C. §404(d)(2)(A) is Deficient and Contrary to Law

The Public Representative concludes that the Postal Service has clearly not performed in accordance with the requirements of 39 U.S.C. 404(d)(2)(A). The Postal Service has not adequately taken into account, (1) the effect on the Postal Service employee at the Lake Creek Post Office, (2) the economic savings to the Postal Service due to the closing, or (3) the effect on the community. Given the Postal Service's failure to take adequately these matters into account in a meaningful manner, the Final Determination does not meet the requirements of subsections 404(d)(2)(A)(i),(ii) and (iv).¹⁰

Consideration of a subject matter required by the law must be more than cursory, and it must be meaningful and rational and not obviously incorrect or inaccurate. Otherwise the statutory terms would be purposeless and of no effect. If only lip service is paid to the issue, there can be no lawful consideration. The cursory nature of the Postal Service's treatment of matters essential to the review process which are, in this case, inter-related leads to the conclusion that the Postal Service's Final Determination is arbitrary and capricious and not in accordance with law.

Effect on Employee. The consideration of the effect on employees was inadequate and directly impacts the economic analysis. Initially, the Post Office Survey Sheet asked the question, "Which career and noncareer employees will be affected and what accommodations will be made for them?" The response was, "PMR moves to another office." AR Item No. 15 at 1, # 7. Subsequently, an ambiguous statement is included in the Proposal and the Final Determination that the "non-career postmaster relief (PMR) *may* be separated." (Emphasis supplied.) AR Item No. 33 at 4; FD-AR Item No. 47 at 5. No reference is made to the prior record statement that the employee moves to another office. Taken together, the statements do not reasonably rise to the

¹⁰ The subsections are tied together with "and" and thus each of the subsection apply.

requirement that the Postal Service consider the “effect on the employees” at the office affected. They merely state the obvious alternatives that the employee may be reassigned or may leave the Postal Service. They do not indicate “what accommodations will be made for [employees].” The Post Office did not seriously consider the actual alternatives available in the local area Post Offices for the employee and the costs to the Postal Service of those alternatives, if any. Nor does the Post Office discuss whether the employee is also working at another Postal Service facility on a salary that would not be reduced by closing the Lake Creek Post Office.

Also, the employee’s own personal situation may dictate more precisely his or her choice of employment, if given reasonable and timely options to consider the alternatives. Surely, being required to take the pulse of the community and its desires through questionnaires into consideration, the Postal Service is under at least an equal obligation to consider the views of its own employees and to take their views into consideration, especially where that obligation is expressed with equal force in the legislative directive. There is no showing in this record that the Postal Service has considered the views of its employee in terms of the likely preference to work at another particular location or to leave the Postal Service and any impact effective union contracts may have upon the decision.

Economic Savings: The requirement to consider the effect on employees also impacts another requirement of section 404. That is the requirement to consider “the economic savings to the Postal Service resulting from such closing.” The Postal Service’s estimate of savings in this case is heavily impacted by the estimated savings in “Postmaster Salary (EAS 11, no COLA) of \$30,493 and fringe benefits of 33.5 percent, or \$10,215. The Postmaster at Lake Creek retired in 2009 and has not been replaced. An OIC operates the Lake Creek Post Office.

The Postal Service’s documentation does not estimate the supposed savings using the salary and benefits received by the OIC, nor does the Administrative Record attempt to either justify or explain the reason for not relying upon actual costs that will be eliminated to measure savings. For instance, the Cooper Post Office must pick up

the costs of the 16 average daily revenue transactions currently occurring at Lake Creek. In addition, the cost of non-revenue producing window service interactions with customers must also be picked up by another postal facility.

Neither is there any indication of the potential positions that may be filled by the employee at other postal facilities that might negate anticipated savings of salary and benefits. Not only is the retired Postmaster's salary an inaccurate measure of actual savings, if the OIC is absorbed into current operations, there may be no salary savings and the so-called estimated savings must be eliminated from the calculation of economic savings. This is required by the recent Commission Order on this subject.¹¹ If greater consideration were given to the impact on the employees, the actual economic impact could be measured rationally and reasonably. The limited considerations given to the effect on the employee fails to meet any reasonable standard of compliance with the law.

The economic savings analysis also suffers from other deficiencies. For instance, there is no discussion of the amount of Post Office Box rental revenue that will be lost, if any. The record is silent about the amount of revenue at Lake Creek, if any, from the rental of Post Office Boxes. If a box holder paying rent will now receive free rural carrier delivery service, it is reasonable to assume the lost rental income will further offset the estimated savings from closing the Lake Creek Post Office. This deficiency further contributes to net loss from closing the Lake Creek Post Office.

The economic analysis fails to include the cost of moving the 84 Post Office Boxes and other Postal Service assets at the Lake Creek Post Office that are apparent from the photographs of the facility. AR Item No. 7. The Commission recently admonished the Postal Service that additional factors need to be considered in the economic savings measurements. It stated,

One important omission from current analysis is the recognition of potentially offsetting costs. The costs of relocating or disposing of

¹¹ Docket No. A2011-19, Lafayette Station Freehold, New Jersey, October 20, 2011 (Order No. 912) at 12-13.

mail processing equipment are not considered. Collection box relocation costs are not considered. The costs of processing the resulting change-of-address forms and of forwarding mail are not considered. The costs of relocating Post Office Boxes may or may not be considered. (Citations omitted.)¹²

The Commission continued:

Rationalizing the Postal Service retail footprint is an ongoing program, and responsible Postal Service officials need accurate financial information to make informed decisions. The Commission finds that the Postal Service should develop a more complete model of factors that impact costs and revenues when a retail facility is discontinued, and make it available to local officials responsible for evaluating the potential benefit of closing or consolidating facilities. *Id.*

The Final Determination includes the numbers behind the economic savings analysis. FD at 10. The total annual costs saved are estimated to include salary of \$30,492, benefits of \$10,215 and rent of \$6,300. The estimated salary and benefits have not been demonstrated and must be removed, leaving a savings in rent of \$6300. Against this savings, the cost of replacement service is \$4,873 for an estimated savings of only \$1,427. In addition, if there is rental lost from Post Office Boxes at Lake Creek that too should be considered and the loss could easily be enough to eliminate any savings whatsoever.¹³ For instance, the loss of rent from 28 boxes paying the lowest Post Office Box rate of \$20 every six months, would reduce revenue by \$1,120 and would reduce the estimated savings of closing the Post Office to merely \$307.00- virtually no savings at all. If the revenue is lost from all 28 customers paying the moderate size Post Office Box rate at Lake Creek of \$38 every six months, the lost revenue for the Postal Service would amount to \$2,128.00, more than offsetting any

¹² Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 60.

¹³ The Postal Service's Comments note that the FD states customers will not have to pay post office box fees. Comments at 7, FD at 2.

estimated economic savings and leading to an *annual net loss* of \$701.00 from closing the Lake Creek Post Office.

Also, the photographs in the record of the Lake Creek Post Office indicate an up-to-date facility with Postal Service fixtures and 84 Post Office Boxes that must certainly be removed. AR Item Nos. 7b-7c. The one-time expense of moving equipment which is similar to one-time building modification costs has not been factored into the savings. The Commission recently pointedly ruled that one-time building modification costs should be factored into the economic analysis.¹⁴

If the cost estimations are reasonably taken into account and considered accurately, the economic savings are very likely negative. Without more information, the actual savings and even potential net costs are unknown. The failure to reasonably consider the economic savings is contrary to the provisions of section 404.

In addition, the economic analysis ignores recent revenue growth. The Postal Service's own records demonstrate revenues between 2009 and 2010 increased by 27 percent (FY 2009-\$20,857 and FY2010 \$26,505), almost back to the level of 2008 (\$29,206) before the recent recession. AR Item No. 33 at 2. Also, the 2010 revenues of \$26,505 were extremely close to the \$27,000 minimum annual revenue cut-off amount being applied by the Postal Service to determine which small Post Offices will be considered for closure. Deferral of the closing until the revenue figures for FY2011 are available may well indicate improved revenues much higher than the cut-off amount and warrant removing the Lake Creek Post Office from the list of potential closings.

Effect on the Community. As with the other requirements of section 404, the Postal Service must take into account the effects on the community in a reasonable manner, otherwise the decision is arbitrary and capricious. It may not merely recite different community effects if they are not accurate or that do not reasonably account for countervailing impacts. Unless the analysis is rational and reasonable, any conclusions drawn from that analysis must be flawed.

¹⁴ Docket No. A2011-19, Order No. 912, *supra* at 12-13.

The advantages of closing the Lake Creek Post Office listed in the Final Determination are illusory at best. FD at 7. For instance, of the six advantages listed, each is of minimal or no value to the community or the customers. One advantage cited in the FD is that customers opting for carrier service will have 24 hour access to their mail. But the Lake Creek Post Office already currently provides 24 hour access Monday through Saturday. AR Item No. 15; Item No. 33 at 2. Thus, the advantage is reduced to providing access to mail on Sunday.

Another advantage is said to be longer-term stable postage rates. As explained above, the actual savings is probably negative. It will cost the Postal Service money to close the Lake Creek Post Office. At best, there might be a savings of less than \$1000 per year—an amount so low in the context of the Postal Service's operations that this advantage is de minimis and cannot reasonably be given weight for providing stable rates.

A third advantage cited is that customers will not have to pay for Post Office Box fees. The record does not indicate whether customers now pay Post Office Box fees. In any event, if they do, then that amount of lost revenue must be taken into account to correct the erroneous economic analysis.

A fourth advantage is cited in the Final Determination that CBU's (Cluster Box Units) offer security. If CBU's are used, depending upon their location, many customers will continue to be obliged to drive to their mail boxes. Thus, CBU's largely negate any advantage of rural route delivery over post office pick-up. Moreover, the security of CBUs is not an advantage of closing the post office, because the post office also has security. Rather than being an advantage of closing the post office, CBU security is really only an offset to the disadvantage of unsecured individual mailboxes in a rural area. This focuses on a disadvantage not even mentioned by the Postal Service—each customer must, alternatively, undergo the time and expense of purchasing a mailbox and maintaining the mailbox against vandalism. If CBU's are to be utilized, who will pay for those costs? These are real costs to the community that the Postal Service has not accounted for in its economic study.

Finally, the fifth and sixth so-called advantages are also minimal; that customers will not need to drive to the post office for postal business, either picking up mail or for purchasing services. (FD at 2, advantages 1 and 6.). Again, these advantages are minimized or eliminated with CBU's that are unprotected from the weather. Given commenter objections to waiting at home for the carrier in order to purchase postal items and the even greater difficulty where CBUs further away from home are involved, it is apparent many customers will not be willing to transact business on the carrier's schedule but will drive to the Cooper Post Office to transact business, or worse for the Postal Service, simply not use the Postal Service. These advantages are illusory.

Moreover, the will of the community was not factored into the effects on the community. The Postal Service ignored the large number in the community who are opposed to the closing—56 percent (30 of 53 responses to the questionnaire). Only 8 percent (4 of 53) favored the proposal. Others expressed no opinion. The large number of responses and the 19 signatures on the community meeting roster suggest there may be a substantial discrepancy in the stated number of Lake Creek customers. AR Item No. 24. The Final Determination indicates there are 28 Post Office Box customers, FD at 2, but the initial post office survey and a December 9, 2010 letter request by the Post Office Review Coordinator also show another 116 intermediate RR customers for a total of 141 customers. AR Item No. 1; Item No. 13. These discrepancies are neither explained on the record nor by the Postal Service Comments.

The statute recognizes the substantial role in community affairs often played by local post offices. This role must be considered by the Postal Service and where the advantages of closing a post office are at an absolute minimum, that role must be weighed in the mix to avoid an arbitrary and capricious result. The Postal Service Comments concedes the Postal Service is required to consider that role. In this case, that role was not considered. Comments at 7. The conclusions about the advantages to the community do not reasonably follow from the record and are arbitrary and capricious. Thus, the Postal Service's considerations intended to be responsive to the community's postal needs and the effects of the closing on the community do not

reasonably rise to the level needed to comply with the law. The Final Determination is therefore flawed and must be remanded as contrary to law.

Maximum degree of regular service. There is another deficiency in the analysis which should be corrected in the future that further suggests the Postal Service will not be providing the maximum degree of regular postal services in small towns.¹⁵ There is no attempt to consider or to alleviate the impact of the closing on the public in general. Historically, every town had its own post office where travelers passing through could be assured of a location to do business with the post office or at least to mail a letter. This analysis does not indicate whether any consideration has been given to maintaining a collection box available to the general public after the closing of the Lake Creek Post Office. It must be assumed there will not be such a collection box. Absent the availability of a collection box at the location of a closed post office, the impact on the general public of the Postal Service's shrinking footprint throughout the nation will be magnified.

VI. CONCLUSION

The deficiency in the posting of the Final Determination at the affected post office is contrary to the Postal Service's own rules. The defective analysis of the impact of the closing warrants remand of the Final Determination. A more comprehensive evaluation is necessary of the impact on the employee, including the employee's compensation and the actual cost savings, if any, from termination of the OIC position at Lake Creek. Remand is also necessary to better account in a reasonable manner for any offsetting losses in revenue and other expenses incurred by the Postal Service to close the Lake Creek Post Office.

Overall, the rationale advanced to justify closing the Lake Creek Post Office is untenable. A Post Office may not be closed solely for economic reasons. Given the

¹⁵ As noted above, this criterion is applicable only where the post office is not self-supporting. The record compiled here strongly suggests this post office is self-supporting.

illusory advantages responsive to the community as demonstrated above, the absence of any real analysis of the effect on the employee, and a lack of a demonstration that the maximum degree of effective service is being provided other than the Postal Service's own unsupported conclusions, the only rationale left to justify the closing is that the Post Office is losing money which by law may not be a basis for closing the office. In any event, that thin reed is not available because a fair analysis of the economics would most probably demonstrate the Postal Service will lose money rather than generate savings by closing the Lake Creek Post Office. Although each of the statutory issues has theoretically been considered by the Postal Service, the considerations do not rely upon substantiated probative evidence and the Postal Service's conclusions are arbitrary and capricious.

For these reasons, the decision of the Postal Service to close the Lake Creek, Texas Post Office should be remanded for compilation of a more accurate record that may or may not justify closure.

Respectfully Submitted,

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